

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**SPECIAL CIVIL APPLICATION No. 6846 of 1988****WITH****SPECIAL CIVIL APPLICATION No. 8011 of 1993****For Approval and Signature:****HONOURABLE MR.JUSTICE M.R. SHAH**

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1 Whether Reporters of Local Papers may be allowed
to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy
of the judgment ?4 Whether this case involves a substantial question
of law as to the interpretation of the
constitution of India, 1950 or any order made
thereunder ?5 Whether it is to be circulated to the civil judge
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RAMBAJAN SUKHDEVPRASAD GUPTA - Petitioner(s)**Versus****COLLECTOR & 1 - Respondent(s)**

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Appearance :

MR IM KAPUR for Petitioner(s) : 1,

MR. MR MENGDEY, ASST. GOVERNMENT PLEADER for Respondent(s) : 1,

MR KB PADIA for Respondent(s) : 2,

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CORAM : HONOURABLE MR.JUSTICE M.R. SHAH**Date : 11/10/2005****COMMON ORAL JUDGMENT**

1. So far as Special Civil Application No.6846 of 1988 is concerned, the same is filed by the petitioner-original plaintiff of Regular Civil Suit No.43/83 filed in the Court of learned Civil Judge (J.D), Olpad for an

appropriate writ, direction or order directing the respondents, more particularly, the Sarpanch of Olpad Gram Panchayat to comply with the terms and conditions contained in the compromise pursis signed before the Lok-Adalat in the aforesaid Regular Civil Suit and to grant the permission to the petitioner to put up superstructure on the land allotted to him.

2. So far as Special Civil Application No.8011 of 1993 is concerned, the same is filed by the Sarpanch of Olpad Group Gram Panchayat for an appropriate writ, direction or order directing the respondent No.2 i.e. the Collector, Surat to grant to the respondent No.3 i.e. the petitioner of Special Civil Application No.6846/1988 permission of construction in terms of the order dated 27.10.1988 passed by this Court in Special Civil Application No.6846/1988 and get the encroached land vacated.

3. It appears from the record that the petitioner of Special Civil Application No.6846/1988 is in occupation and possession of the Panchayat land which according to the Collector, Surat is a Gamtal land and the Panchayat wanted the said land for the purpose of construction of

the Water Tank for public purpose. The petitioner was apprehending that he will be removed from the land in question and therefore, he has filed Regular Civil Suit No.43/83 in the Court of learned Civil Judge (J.D.), Olpad for a declaration and permanent injunction. It appears that in the said suit only the Gram Panchayat was a party and there was some compromise between the petitioner of Special Civil Application No.6846/1988 and the village Panchayat and the Panchayat offered some land which is forming part of Survey No.782 which is a Gamtal land and accordingly, the aforesaid Civil Suit came to be disposed of in terms of the compromise. It appears that subsequently an application was submitted before the Collector, Surat but the permission was not granted to put up the construction in the land which is allotted pursuant to the compromise and therefore, the petitioner has preferred the Special Civil Application No.6846 of 1988 and simultaneously, the Panchayat has also preferred the aforesaid Special Civil Application No.8011 of 1993.

4.To know the correct facts, this Court directed the Collector, Surat to remain present before this Court and the Collector, Surat is present in the Court along

with entire record and it is submitted that the portion of the land bearing Survey No.782 which was agreed to be allotted to the petitioner pursuant to the concerned compromise arrived at in Regular Civil Suit No.43/83 is concerned, the same is a Government Talav land and as per the judgment of the Division Bench of this Court, the same cannot be given and/or allotted to the petitioner. It is also further submitted by her that in fact, at the relevant time, when the city survey was made, there was an encroachment and/or the petitioner was in possession of only 37.5 sq. mts. of land and at present, the land which is occupied by the petitioner is more than 154.80 sq. mts. of land. Be that it may, at present, this Court is not concerned with the same. However, the fact remains that the land which was agreed to be allotted to the petitioner pursuant to the concerned compromise arrived at in the aforesaid Regular Civil Suit No.43/83 i.e. land bearing Survey No.782 is concerned, the same cannot be given to the petitioner as it is a Talav land. This Court in the case of **Shailesh R. Shah V/s. State of Gujarat** reported in **2002(3) GLR Page-2295**, has directed the State Government not to allot any land from the Talav land and to see to it that the Talav is preserved. It is

also required to be noted that even in the aforesaid suit, the Collector, Surat was not a party to the proceedings and only the Panchayat was the party to the proceedings and considering the aforesaid facts and circumstances of the case, it is not possible to act as per the concerned compromise arrived at between the parties in the aforesaid suit. Under the circumstances and in the peculiar facts and circumstances of the case, it is held that the consent decree which is between the petitioner and the Panchayat is not in a position to be acted upon and therefore the Regular Civil Suit No.43/83 is required to be decided on merits. Under the circumstances, the consent decree is hereby quashed and set aside and Regular Civil Suit No.43/83 pending in the Court of learned Civil Judge (J.D.), Olpad is hereby restored and the learned Civil Judge (J.D.), Olpad is directed to take the said suit on file and is directed to decide and dispose of the same in accordance with law and on merits. However, it will be open for the petitioner to move an appropriate application to the Collector, Surat through the Panchayat for the allotment of some other land and if such a representation is made within 4 weeks from today, the Collector, Surat is directed to consider the

same in accordance with law and on merits and as per the Government Resolutions and subject to the availability of the land which can be allotted to the petitioner. The learned Civil Judge (J.D.), Olpad is directed to give utmost priority to the aforesaid Regular Civil Suit No.43/83 and decide and dispose of the same as early as possible preferably within a period of 6 months from the date of receipt of this order. Till the suit is decided and/or an appropriate decision is taken by the Collector, Surat with regard to the allotment of the land as stated above, the parties are directed to maintain status-quo as on today. However, it is made clear that this Court has not expressed any opinion on the merits of the case. The learned Civil Judge (J.D.), Olpad is to decide and dispose of the suit in accordance with law and on merits and in any way without being influenced by the order of this Court as aforesaid directing the parties to maintain status-quo.

5. With these observations and directions, both the Special Civil Applications are disposed of.

(M.R. SHAH, J.)

kdc.